

(b) The Thrift Savings Fund consists of the sum of all amounts contributed under section 8432 of this title and all amounts deposited under section 8479(b) of this title, increased by the total net earnings from investments of sums in the Thrift Savings Fund or reduced by the total net losses from investments of the Thrift Savings Fund, and reduced by the total amount of payments made from the Thrift Savings Fund (including payments for administrative expenses).

(c) The sums in the Thrift Savings Fund are appropriated and shall remain available without fiscal year limitation—

(1) to invest under section 8438 of this title;

(2) to pay benefits or purchase annuity contracts under this subchapter;

(3) to pay the administrative expenses of the Federal Retirement Thrift Investment Management System prescribed in subchapter VII of this chapter;

(4) to make distributions for the purposes of section 8440(b) of this title;

(5) to make loans to employees and Members as authorized under section 8433(g) of this title; and

(6) to purchase insurance as provided in section 8479(b)(2) of this title.

(d) Administrative expenses incurred to carry out this subchapter and subchapter VII of this chapter shall be paid first out of any sums in the Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund.

(e)(1) Subject to subsection (d) and paragraphs (2) and (3), sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter.

(2) Except as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process. For the purposes of this paragraph, a loan made from such Fund to an employee or Member shall not be considered to be an assignment or alienation.

(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659) or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a). For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).

(f) The sums in the Thrift Savings Fund shall not be appropriated for any purpose other than

the purposes specified in this section and may not be used for any other purpose.

(g) All sums contributed to the Thrift Savings Fund by an employee or Member or by an employing agency for the benefit of such employee or Member and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such employee or Member.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 550; amended Pub. L. 100-238, title I, §§116, 117(a), Jan. 8, 1988, 101 Stat. 1751; Pub. L. 103-226, §9(i)(16), Mar. 30, 1994, 108 Stat. 122; Pub. L. 103-358, §2(b)(4), Oct. 14, 1994, 108 Stat. 3421.)

#### AMENDMENTS

1994—Subsec. (c)(5). Pub. L. 103-226 substituted “section 8433(g)” for “section 8433(i)”.

Subsec. (e)(3). Pub. L. 103-358 substituted “or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a).” for period at end of first sentence.

1988—Subsec. (d). Pub. L. 100-238, §117(a)(1), struck out “attributable to sums contributed to such Fund under section 8432(c) of this title” after “such Fund”.

Subsec. (e)(1). Pub. L. 100-238, §117(a)(2), inserted “subsection (d) and” after “Subject to”.

Subsec. (e)(3). Pub. L. 100-238, §116, inserted at end “For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).”

#### EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-358 effective Oct. 14, 1994, and applicable with respect to any decree, order, or other legal process, or notice of agreement received by Office of Personnel Management or Executive Director of Federal Retirement Thrift Investment Board on or after Oct. 14, 1994, see section 3 of Pub. L. 103-358, set out as a note under section 8345 of this title.

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 117(b) of Pub. L. 100-238 provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act [Jan. 8, 1988].”

### § 8438. Investment of Thrift Savings Fund

(a) For the purposes of this section—

(1) the term “Common Stock Index Investment Fund” means the Common Stock Index Investment Fund established under subsection (b)(1)(C);

(2) the term “equity capital” means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;

(3) the term “Fixed Income Investment Fund” means the Fixed Income Investment Fund established under subsection (b)(1)(B);

(4) the term “Government Securities Investment Fund” means the Government Securities Investment Fund established under subsection (b)(1)(A);

(5) the term “International Stock Index Investment Fund” means the International

Stock Index Investment Fund established under subsection (b)(1)(E);

(6) the term “net worth” means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

(7) the term “plan” means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

(8) the term “qualified professional asset manager” means—

(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) which—

(i) has the power to manage, acquire, or dispose of assets of a plan; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of \$1,000,000;

(B) a savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation, which—

(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital or net worth in excess of \$1,000,000;

(C) an insurance company which—

(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of \$1,000,000; and

(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or

(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of \$50,000,000, and—

(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of \$750,000; or

(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by—

(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determina-

tion for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds \$750,000;

(II) a qualified professional asset manager described in subparagraph (A), (B), or (C); or

(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of \$750,000;

(9) the term “shareholder's or partner's equity”, as used in paragraph (8)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (8)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section; and

(10) the term “Small Capitalization Stock Index Investment Fund” means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D).

(b)(1) The Board shall establish—

(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (e);

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in—

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time;

(C) a Common Stock Index Investment Fund as provided in paragraph (2);

(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3); and

(E) an International Stock Index Investment Fund as provided in paragraph (4).

(2)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.

(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable,

the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Fund.

(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(4)(A) The Board shall select an index which is a commonly recognized index comprised of stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(c)(1) The Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).

(2) If an election has not been made with respect to any sums in the Thrift Savings Fund available for investment, the Executive Director shall invest such sums in the Government Securities Investment Fund.

(d)(1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account are to be invested or reinvested.

(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

(e)(1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.

(2)(A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market

yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

(f) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

(g)(1) Notwithstanding subsection (e) of this section, the Secretary of the Treasury may suspend the issuance of additional amounts of obligations of the United States, if such issuances could not be made without causing the public debt of the United States to exceed the public debt limit, as determined by the Secretary of the Treasury.

(2) Any issuances of obligations to the Government Securities Investment Fund which, solely by reason of the public debt limit are not issued, shall be issued under subsection (e) by the Secretary of the Treasury as soon as such issuances can be issued without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Government Securities Investment Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (e)(2) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of obligations of the United States by the Government Securities Investment Fund will replicate the obligations that would then be held by the Government Securities Investment Fund under the procedure set forth in paragraph (5), if the suspension of issuances under paragraph (1) of this subsection had not occurred.

(4) On the first business day after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Government Securities Investment Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount equal to the excess of the net amount of interest that would have been earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period if—

(A) amounts in the Government Securities Investment Fund that were available for investment in obligations of the United States and were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested under the procedure set forth in paragraph (5), over

(B) the net amount of interest actually earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period.

(5) On each business day during the debt limit suspension period, the Executive Director shall

notify the Secretary of the Treasury of the amounts, by maturity, that would have been invested or redeemed each day had the debt issuance suspension period not occurred.

(6) For purposes of this subsection and subsection (h) of this section—

(A) the term “public debt limit” means the limitation imposed by section 3101(b) of title 31; and

(B) the term “debt issuance suspension period” means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(h)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Thrift Savings Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (g) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than 30 days after the first business day after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Executive Director.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (e) of this section, the Secretary shall immediately notify Congress and the Executive Director of the determination. The notification shall be made in writing.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 551; amended Pub. L. 100-43, §2, May 22, 1987, 101 Stat. 315; Pub. L. 100-366, §2(a), July 13, 1988, 102 Stat. 826; Pub. L. 101-335, §3(a), July 17, 1990, 104 Stat. 320; Pub. L. 102-378, §2(68), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title I, §102]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372; Pub. L. 104-316, title I, §103(i), Oct. 19, 1996, 110 Stat. 3829.)

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-208, §101(f) [title VI, §659 [title I, §102(1)]]], added par. (5), redesignated former pars. (5) to (8) as (6) to (9), respectively, in par. (9) substituted “paragraph (8)(D)” for “paragraph (7)(D)” in two places, and added par. (10).

Subsec. (b). Pub. L. 104-208, §101(f) [title VI, §659 [title I, §102(2)]]], in par. (1) added subpars. (D) and (E) and added pars. (3) and (4).

Subsec. (h)(1). Pub. L. 104-316 struck out “and the Comptroller General of the United States” before period at end.

1992—Subsec. (a)(7)(B). Pub. L. 102-378 substituted “Deposit” for “Savings and Loan”.

1990—Subsec. (b)(1)(A). Pub. L. 101-335, §3(a)(2), substituted “subsection (e)” for “subsection (f)”.

Subsec. (c)(1). Pub. L. 101-335, §3(a)(3), substituted “The” for “Subject to subsection (e), the”.

Subsec. (d)(1). Pub. L. 101-335, §3(a)(4), struck out “and not subject to subsection (e)” after “individual’s account”.

Subsec. (e). Pub. L. 101-335, §3(a)(1), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to minimum percentages to be invested in Government Securities Investment Fund and limitations on reinvestment of sums invested in Government Securities Investment Fund prior to years 1992 and 1997.

Subsec. (f). Pub. L. 101-335, §3(a)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 101-335, §3(a)(1), (5), (6), redesignated subsec. (h) as (g) and substituted “subsection (e)” for “subsection (f)” in pars. (1) and (2), “subsection (e)(2)” for “subsection (f)(2)” in par. (3), and “subsection (h)” for “subsection (i)” in par. (6). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 101-335, §3(a)(1), (7), redesignated subsec. (i) as (h) and substituted “subsection (g)” for “subsection (h)” in par. (1) and “subsection (e)” for “subsection (f)” in par. (2). Former subsec. (h) redesignated (g).

1988—Subsec. (e)(3)(A). Pub. L. 100-366 struck out “and the earnings attributable to the investment of such sums” after “paragraph (1)”.

1987—Subsecs. (h), (i). Pub. L. 100-43 added subsecs. (h) and (i).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, §659 [title I, §104]] provided that: “This title [title I (§§101-104)] of section 659 of section 101(f) of Pub. L. 104-208, amending this section and section 8439 of this title and enacting provisions set out as a note under section 8401 of this title] shall take effect on the date of enactment of this Act [Sept. 30, 1996], and the Funds established under this title shall be offered for investment at the earliest practicable election period (described in section 8432(b) of title 5, United States Code) as determined by the Executive Director in regulations.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 2(b) of Pub. L. 100-366 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to earnings attributable to contributions made to the Thrift Savings Fund on or after April 1, 1987.”

#### REMOVAL OF INVESTMENT RESTRICTIONS

Section 3(b)(4) of Pub. L. 101-335 provided that: “Any other provision of law, in effect on the date of enactment of this Act [July 17, 1990], which provides that any amounts contributed to the Thrift Savings Fund, or earnings thereon, may be invested or reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of title 5, United States Code, shall cease to be effective.”

### § 8439. Accounting and information

(a)(1) The Executive Director shall establish and maintain an account for each individual who makes contributions or for whom contributions are made under section 8432 of this title or who makes contributions to the Thrift Savings Fund.

(2) The balance in an individual’s account at any time is the excess of—

(A) the sum of—

(i) all contributions made to the Thrift Savings Fund by the individual;

(ii) all contributions made to such Fund for the benefit of the individual; and

(iii) the total amount of the allocations made to and reductions made in the account pursuant to paragraph (3), over

(B) the amounts paid out of the Thrift Savings Fund with respect to such individual under this subchapter.